

S E C T. XVII.

Adjudication upon Moveable Bonds.

1627. July 4. EDGAR and JOHNSTON *against* FINLAYSON.

No 95.

A comprising
was sustained
on an herit-
able bond,
not made
moveable by
a charge.

IN a double pointing betwixt Edgar and Johnston against Finlayson, the LORDS found, that a bond made to the said Robert, whereby Walter Finlayson was obliged to pay a sum to the creditor foresaid at the term, and failing thereof to infest him at his option in an annualrent therefor; providing always in the same bond, that notwithstanding of that clause of infestment, the debtor should pay at any term thereafter the principal sum with annualrents, which should be owing for the time without requisition, that that bond of this tenor, was a sufficient ground whereupon comprising might be deduced by the creditor against his debtor for the principal sum, and for the bygones owing before the comprising; which comprising the LORDS sustained, albeit the other party alleged that the same was null, being deduced upon an heritable bond, never being made moveable by a preceding charge, without which had preceded, and that thereby the bond was made moveable, he *alleged* that no comprising could be deduced thereon; which allegiance was repelled, in respect of the foresaid provision of the bond, which gave the creditor as great liberty to comprise as he might point therefor, and there needed no other preceding charge to have made it moveable, except he had intended to prosecute personal execution against his party by letters of horning; and albeit that the creditor in the denunciation of his comprising, had denounced his debtor's lands, to be comprised for more annualrents than were resting the time of the comprising, and that the other party *alleged*, That therefore the creditor's self had acknowledged, that his bond remained an heritable bond, and so that no comprising could be deduced thereon, seeing he had denounced to comprise for a term's annualrent subsequent to the date of the comprising, which he could not have done, if he had not thereby acknowledged the sum and bond to be heritable, and to be subject to annualrent; yet this allegiance was repelled, seeing, albeit the denunciation was made so, yet the comprising was only deduced, and the debtor's lands comprised for the annualrents which were owing for terms expired before the comprising, which comprising could not be prejudged by the denunciation containing greater sums, the same being restricted by the subsequent comprising following thereupon. *See* LEGAL DILIGENCE.

Act. Nicolson et Cunningham.

Alt. Hope et Betsbes.

Clerk, Gibson.

Durie, p. 304.